



## Revisiting retaliation complaint

32 messages

Thu, Dec 20, 2018 at 10:38 AM

To: kseide2@emory.edu  
Cc: maurice.middleton2@emory.edu, lynell.cadray@emory.edu  
Bcc: [REDACTED]

Dear Ms. Seidenberg and OEI,

When we last discussed my case you made the decision not to pursue my inquiry concerning my former advisor, Clifton Crais. You based this decision on the determination that his threat to sue me, explicitly made with the intention of getting me to recant the complaint I had brought against him, did not meet the definition of an "adverse action." As this was the only part of my complaint that fell within your 180-day statute of limitations, you closed the inquiry on the grounds of the statute of limitations.

I wanted to bring to your attention that the EEOC's 2016 guidance on retaliation ([https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#\\_ftnref122](https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm#_ftnref122)) explicitly lists "filing a civil action" as a "materially adverse action."

They cite a Supreme Court case in support of this, *Burlington N.*, 548 U.S. (<https://www.law.cornell.edu/supct/html/05-259.ZO.html>), where Justice Breyer's decision says the following:

"see also *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U. S. 731, 740 (1983) (construing anti-retaliation provision to "prohibi[t] a wide variety of employer conduct that is intended to restrain, or that has the likely effect of restraining, employees in the exercise of protected activities," **including the retaliatory filing of a lawsuit against an employee**); *NLRB v. Scrivener*, 405 U. S. 117, 121–122 (1972) (purpose of the anti-retaliation provision is to ensure that employees are " 'completely free from coercion against reporting' " unlawful practices)."

As you can see, the decisive factor in determining a retaliatory adverse action is not (as you suggested) whether or not the action under other circumstances would be legal, but whether or not it is coercive with respect to preventing reporting, which Dr. Crais's threat clearly was (explicitly and intentionally so).

There are also several examples in the guidance that treat threats as adverse actions (*passim*). Obviously, a threat is still a form of coercion.

I am requesting that the Office of Equity and Inclusion reconsider my inquiry. Clearly, Dr. Crais's threat constitutes retaliation, and as this falls within your statute of limitations, my entire case, including all the preceding events, should be considered on their merits.

Sincerely,

Seidenberg, Kristyne Loretta <kseide2@emory.edu>

Thu, Dec 20, 2018 at 12:48 PM

Cc: "Middleton, Maurice" <maurice.middleton2@emory.edu>, "Cadray, Lynell" <lynell.cadray@emory.edu>, "Babcock, Nicole" <nicoles.babcock@emory.edu>

Thank you Ms. [REDACTED]

There is no appeal process under OEI's guiding Policy.

Your former inquiry with OEI in no way equates or constitutes civil litigation or any legal process.

The OEI process is 100% internal and is governed by Emory Policy.

As we discussed previously, your allegations do not fall within the scope of the purview of the Office of Equity and Inclusion.

Sincerely,

**Kristyne L. Seidenberg, MS, JD**

**Office of Equity and Inclusion**

**Emory University**

[201 Dowman Drive, Suite 305](#)

Atlanta, GA 30322

P: (404) 712-9165

F: (404) 712-9108

[Kseide2@emory.edu](mailto:Kseide2@emory.edu)

*Emory University is an EEO/AA/Disability/Veteran employer dedicated to building a community of excellence, equity and diversity. Emory University welcomes applications from women, underrepresented minorities, individuals with disabilities, protected veterans, members of sexual minority groups and other candidates who will lead and contribute to the enrichment of ideas and perspectives.*

[Quoted text hidden]

---

This e-mail message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message (including any attachments) is strictly prohibited.

If you have received this message in error, please contact the sender by reply e-mail message and destroy all copies of the original message (including attachments).

Thu, Dec 20, 2018 at 12:50 PM

[Quoted text hidden]

Thu, Dec 20, 2018 at 1:34 PM